PUBLIC NOTICE

Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

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Internet: http://www.fcc.gov
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DA 05-3144
December 5, 2005

APPLICATION OF KMC TELECOM V, INC. AND KMC TELECOM OF VIRGINIA, INC. TO DISCONTINUE DOMESTIC TELECOMMUNICATIONS SERVICES NOT AUTOMATICALLY GRANTED, FURTHER PUBLIC COMMENT REQUESTED
WC Docket No. 05-309
Comp. Pol. File No. 729

Comments Due: December 12, 2005

On **October 27, 2005, KMC Telecom V, Inc.** (KMC Telecom V) and **KMC Telecom of Virginia, Inc.** (KMC Telecom of VA) (collectively, KMC or Applicants), located at **1545 Route 206, Suite 300, Bedminster, NJ 07921,** filed an application with the Federal Communications Commission (FCC or Commission) requesting authority to the extent necessary, under section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, and section 63.71 of the Commission's rules, 47 C.F.R. § 63.71, to discontinue its provision of certain domestic telecommunications services in Alabama, Arizona, Arkansas, California, Connecticut, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. By this Public Notice, the Wireline Competition Bureau announces that KMC's application to discontinue service is not automatically granted.

In its application, KMC states that KMC Telecom V and KMC Telecom of VA are wholly owned subsidiaries of KMC Telecom Holdings, Inc. KMC indicates that KMC Telecom V provides enhanced origination service, enhanced termination service, dial access service and PRI services in all of the above-mentioned states, and KMC Telecom of VA provides these services in Virginia. KMC represents that it does not have funding sufficient to pay its underlying network providers, and that it therefore must discontinue service to its customers in the affected states. KMC indicates that there are a total of approximately twenty-four (24) customers affected by its proposed discontinuance of service, and that they are all carrier customers. KMC proposes to discontinue its provision of services as soon as the necessary regulatory approvals are obtained, and states that it provided all affected customers with written notification of its planned discontinuance by overnight delivery on October 26, 2005.

By Public Notice dated November 4, 2005, the Commission notified the public that, in accordance with 47 C.F.R. § 63.71(c), the application would be deemed to be automatically granted on the thirty-first (31st) day after the release date of the notice, unless the Commission notifies the Applicants that the grant will not be automatically effective. Accordingly, the automatic grant date for the application would have been December 5, 2005.

The Commission will normally authorize proposed discontinuances of service unless it is shown that customers or other end users would be unable to receive service or a reasonable substitute from another carrier, or that the public convenience and necessity would be otherwise adversely affected. The Commission has received four comments in opposition to KMC's proposed discontinuance.[1] These commenters, including Grande Communications, US LEC, and Vonage, primarily object to KMC's proposed discontinuance on the grounds that they will not be able to fully transition to alternative services by December 5, 2005.[2] Commenters argue that because KMC's services are integral to their businesses, any discontinuance of service would affect them adversely. Specifically, commenters state that permitting KMC to discontinue service on December 5, 2005, will not allow sufficient time for them to acquire and activate alternative services, and might result in loss of service to a substantial number of their end users. As a result, these commenters have submitted various requests for additional time in order to complete a transition to alternative service providers.[3] On November 28, 2005, KMC filed a reply stating that it does not agree that customers would be unable to arrange for replacement services before December 5, 2005, but indicates that KMC has nevertheless taken steps to temporarily extend its operations and extend the date for termination of service to all of its customers until January 2, 2006, in order to allow for a transition to alternative services.[4]

Where comments on a discontinuance application allege that the service has no reasonable substitute or that either present or future public convenience and necessity will be adversely affected, the Commission will scrutinize the discontinuance application, consistent with its statutory obligations. See 47 U.S.C. § 214(a), 47 CFR § 63.71. The Supreme Court has ruled that the Commission has considerable discretion in deciding how to make its section 214 public interest finding. *FCC v. RCA Communications, Inc.*, 73 S.Ct 998, 1002 (1953). Because the comments raise significant concerns regarding a potential loss of service to customers, we find that the public interest will not be served by automatic grant of KMC's application. Therefore, by this Public Notice, KMC is notified that its application to discontinue domestic telecommunications services will not be granted automatically. We emphasize that our removal of KMC's application from the automatic grant process should not be construed as a final determination on the merits of KMC's request for authority to discontinue service.

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[1] *See* Response in Opposition of Grande Communications Networks, Inc. at 2 (Grande Communications Comments); Opposition of Insight Midwest Holdings, LLC at 4 (Insight Comments); US LEC Acquisition Co. at 2-3 (US LEC Comments); Vonage Comments at 2.

[2] On December 2, 2005, KMC and Insight filed a joint submission whereby KMC amended its application and agreed (1) to help facilitate the transition of Insight and its telephony customers off of KMC's network and services, and (2) not to discontinue services to Insight until after midnight January 2, 2006. *See* Joint Submission of KMC Telecom V, Inc., KMC Telecom of Virginia, Inc., and Insight Midwest Holdings, LLC, WC Docket No. 05-309 (December 2, 2005) (KMC/Insight Joint Filing). In reliance on KMC's commitments and agreements, Insight agreed to withdraw its opposition to KMC's discontinuance application as amended. KMC/Insight Joint Filing at 2.

[3] *See* Grande Communications Comments at 2 (seeking an extension until January 2, 2006); US LEC Comments at 2-3 (seeking an extension for an additional 30 days at the most until January 6, 2006); Vonage Comments at 2 (claiming that acquiring alternative services could require from 90 to 120 business days, and requesting a total transition period of at least 120 days).

[4] *See* Letter from Melissa S. Conway, Kelley Drye & Warren, LLP, Counsel for KMC Telecom V, Inc. and KMC Telecom of Virginia, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 05-309 (November 28, 2005) (KMC Reply).

We seek further information from the public regarding KMC's application and hereby request comments no later than December 12, 2005. Comments should include specific information about the impact of this proposed discontinuance on the commenter, including any inability to acquire reasonable substitute service. In particular, we also seek comment regarding the dates proposed for discontinuance in the record, and any reasons why KMC's proposed January 2, 2006 extension should not be deemed reasonable or in the public interest given KMC's stated inability to pay its underlying network providers for an indefinite period. This proceeding is considered a "permit but disclose" proceeding for purposes of the Commission's ex parte rules, 47 C.F.R. §§ 1.1200-1.1216. Comments should refer to WC Docket No. 05-309 and Comp. Pol. File No. 729. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to http://www.fcc.gov/cgb/ecfs/. Filers should follow the instructions provided on the website for submitting comments. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

Parties who choose to file by paper must send an original and four (4) copies of the comments to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Room TW-A325, Washington, D.C. 20554. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express, and Priority mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554.

Two (2) copies of the comments should also be sent to the Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 5-C327, Washington, D.C. 20554, Attention: Carmell Weathers. In addition, comments should be served upon the Applicants. Commenters are also requested to fax their comments to the FCC at (202) 418-2345, Attention: Carmell Weathers.

The application will be available for public inspection and copying during regular business hours at the FCC Reference Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554, (202) 418-0270. A copy of the application may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, telephone (202) 488-5300, facsimile (202) 488-5563, or via e-mail at FCC@BCPIWEB.COM. People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

For further information, contact Carmell Weathers, (202) 418-2325 (voice), carmell.weathers@fcc.gov, or Rodney McDonald, (202) 418-7513 (voice), rodney.mcdonald@fcc.gov of the Competition Policy Division, Wireline Competition Bureau. The TTY number is (202) 418-0484. For further information on procedures regarding section 214 please visit http://www.fcc.gov/wcb/cpd/other_adjud.

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